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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re B.R., a Person Coming Under the  
Juvenile Court Law.

LAKE COUNTY DEPARTMENT OF  
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

E.R., et al.,

Defendants and Appellants.

A146226

(Lake County  
Super. Ct. No. JV320421-D)

E.R. (Father) and J.R. (Mother) have four children, including B.R., a twelve-year-old adopted daughter. In early 2015, the Lake County Department of Social Services (the Agency) filed dependency petitions regarding each of the children, but it later abandoned them, except the one pertaining to B.R. An amended petition alleged that Father had sexually molested B.R. and that Mother had failed to protect her.<sup>1</sup> At the jurisdictional hearing, B.R. recounted a year-long, escalating pattern of molestation, and Mother disputed these claims. The juvenile court found the jurisdictional allegations to be true.

<sup>1</sup> The allegations were brought under Welfare and Institutions Code, section 300, subdivisions (b) and (d). All further statutory references are to the Welfare and Institutions Code.

Mother and Father contend that the juvenile court's findings are not supported by substantial evidence. We disagree and affirm.

### BACKGROUND

The amended petition alleged that Father had molested B.R. and that Mother had disbelieved B.R.'s claims and failed to protect her. The jurisdictional report explained that a social worker and a sheriff's deputy went to the family's home to investigate a report of possible molestation.<sup>2</sup> The investigators first met with B.R. alone, and she denied any abuse. After the interview ended, while the social worker and the deputy were speaking with Mother, B.R. came to them and asked to speak privately. In Mother's absence, B.R. began crying and told the investigators that over the course of previous year, Father had fondled her breasts, touched her buttocks inside her clothing, kissed her, and forced her to touch his penis. B.R. claimed to have told Mother about the abuse several times.

When questioned, Mother acknowledged having been told by B.R. six to eight months earlier that Father had molested her, but Mother did not believe B.R., whom she considered to be a "liar." Nonetheless, Mother said that after B.R. told her about the abuse, she took B.R. to a doctor for a medical examination and enrolled her in counseling. Upon investigation, the Agency was unable to find a record of the doctor's visit.

B.R.'s older sister disclosed to the investigators that B.R. had told her some time earlier that Father had touched her breasts, but the sister reported that she had never seen anything improper between B.R. and Father. The sister also disclosed that when B.R. told her of the molestation, B.R. was distraught and the sister believed her.

The jurisdictional report noted that the Agency had interviewed B.R. in connection with another matter about two months before the Agency filed the dependency petitions giving rise to this case. At that time, B.R. was questioned about claims she had made, presumably to Mother, that Father had sexually abused her. At that time, B.R. told the

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<sup>2</sup> It appears that B.R. told some of her friends about the molestation, who then told a teacher. The teacher notified the Agency.

Agency “that she had been upset at [Mother] and [Father] and retaliated by making up allegations of sexual abuse.”

An extensive contested jurisdictional hearing was conducted over several sessions in July and August 2015. B.R.’s account of the alleged molestation was introduced both through a video recording of a formal interview conducted the day after her detention and by live testimony, given in the absence of her parents. In the interview, B.R. said the molestation had started over a year earlier. She stated that, at first, Father limited himself to touching her torso under her shirt. But she said that over the course of the year, the touching became more overtly sexual. For a time, Father had just touched her breasts, but had more recently started to put his hand down her pants, and his demands had increased. According to B.R., the most recent incident occurred four days before the interview, when Father touched B.R.’s breasts and buttocks and forced B.R. to touch his penis. B.R. described what appeared to be a regular practice. Father gave B.R. a cell phone with an alarm clock in the evening. When she woke up, she was expected to take coffee and a bagel to Father, who was lying in bed next to Mother. Then they would engage in what Father referred to as “cuddle time,” during which he would touch B.R. inappropriately under the bed covers, stopping if Mother woke up. Father also arranged to be alone with B.R. on his weekly day off work, waiting until Mother left the house on errands to molest B.R. Father made clear that B.R.’s receipt of a cell phone and other considerations depended upon her continued cooperation.

B.R. also stated that she had told Mother about Father’s abuse months earlier. At the time, Mother arranged for B.R. to see a therapist, but B.R. denied the abuse to the therapist because she was concerned about disrupting her family if she told the truth.

B.R.’s testimony at the hearing was generally consistent with her statements during the interview.

Mother testified that she had never seen Father behave inappropriately with B.R., and that B.R. was rarely, if ever, alone at home with Father. She stated that B.R. had not been with Mother and Father in their bed for over a year, and she said that she had never seen B.R. underneath the covers with Father. Mother acknowledged that she attended

school during the day, but she claimed that on most days she arrived home before Father returned from work.

Mother testified that she was shocked when B.R. told her in June 2014 that Father molested her. She questioned B.R. about it, and they developed a plan to respond. Mother arranged for B.R. to see a therapist and made sure B.R. was not left alone with Father. Mother also spoke with Father about the allegations. Soon afterward, Father's mother moved into the family home. Father's mother also testified, and she stated she never left Father alone with B.R.

Mother did not believe B.R.'s claims about Father in part because B.R. had a history of dishonesty. According to Mother, in the last two years the family had "to deal with issues of dishonesty" by B.R. "too many [times] to count." B.R.'s use of the internet also had been a family concern. At some point, she had been disciplined because she had "highly sexual" communications with an adult on a website. At that time, according to a social worker who testified, B.R. briefly ran away from home to be with a man she had met over the internet. B.R. was upset with Mother and Father because they had responded to the incident by restricting her internet usage.

The juvenile court acknowledged that the case was difficult, but it ultimately found the allegations of molestation to be true. The court evaluated the credibility of the competing testimony on the basis of "what is harder for me to believe than what is easier for me to believe. . . . [¶] [I]t's hard for me to believe on one side that father[,] having been put on notice back in June that [B.R. is] making allegations of sexual misconduct[,] . . . [¶] would continue such conduct, which is what [B.R.] alleges happened, knowing full well that his wife knows about these allegations." On the other hand, "it's also hard for me to believe that [B.R.] would persist . . . time after time in repeating these allegations sometimes tearfully. . . . [¶] I suspect that it was not pleasant for her to go through interviews and testifying in court. And more importantly understanding, as she did, that the likely result if she prevailed would be basically the loss of everything, including her family. . . . [¶] Logically that would be why she recanted, as she said because she didn't want to lose everything . . . ."

The court ultimately chose to accept B.R.’s testimony because of these grave consequences and the general, but not excessive, consistency of her account, which the court found to have “the ring of truth.” As to Mother, the court concluded she “understandabl[y]” did not believe B.R.’s accusations. Although Mother had made “admirable efforts to try to protect” B.R., those efforts “didn’t have sufficient heart to get behind them. Because there’s really, in her mind I think there’s really no possibility that there’s anything really to protect her from.” The court therefore found true the allegation that Mother had not adequately protected B.R. from Father.

The juvenile court later entered a dispositional order finding B.R. to be a dependent of the court, confirming her removal from the family home, and granting reunification services to both parents. Father and Mother both appeal from this order.

## DISCUSSION

Father and Mother contend that the jurisdictional allegations found true by the juvenile court were not supported by substantial evidence. We disagree.

As the parents recognize, we affirm jurisdictional findings if they are supported by substantial evidence. (*In re James R.* (2009) 176 Cal.App.4th 129, 134-135.) “ ‘ “In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.” [Citation.] “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [Citations.] ‘ “[T]he [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could find [that the order is appropriate].” ’ ” ’ ” (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

As to the allegations regarding Father, B.R. told investigators, and later testified, that he had fondled her on several occasions, beginning about a year before the initiation of the dependency proceedings. This testimony, if reasonable and credible, constituted

substantial evidence to support the court's finding. (*People v. Fuiava* (2012) 53 Cal.4th 622, 711.)

B.R.'s testimony was neither unreasonable nor incredible. Nothing in her account was demonstrated to be false by reference to objective evidence. On the contrary, as the juvenile court noted, the general nature of her testimony was plausible, and B.R.'s credibility was enhanced by B.R.'s awareness and acknowledgment of the disruption her allegations would bring to her own and her family members' lives. Furthermore, there was little evidence of anything that would provide a plausible motivation for B.R.'s invention of such serious charges. Although the parents contend the allegations were made in retribution for their restricting B.R.'s access to social media, these restrictions appear to have significantly predated the most recent allegations. At the time the dependency proceeding was commenced, there was no evidence of any particular conflict between the parents and B.R.

We recognize that B.R. twice retracted her allegations of abuse, claiming that she had invented them out of spite for her parents. But those retractions do not necessarily mean that her allegations were untrue or that her testimony about them was insubstantial evidence that abuse occurred. To begin with, B.R.'s explanation for the retractions was plausible and understandable in a young, vulnerable person. And there is no indication that B.R. ever retracted her claims to Mother. She retracted them to people outside the family, people who could bring about the negative consequences she feared and with whom she might be more ambivalent about revealing the abuse. Furthermore, the way in which B.R. revealed the allegations was inconsistent with a retributive intent. If B.R. truly wanted to create trouble for her parents, she could have told a teacher about it or revealed it publicly. Instead, she told her older sister and Mother. This suggests a plea for help, not an attempt at revenge.

Father suggests many reasons why B.R.'s testimony should not be believed, but none of them undermines B.R.'s testimony so as to render it insubstantial evidence. For example, Father argues that there was no physical evidence or other witnesses to support B.R.'s testimony, but the type of molestation to which B.R. testified leaves little physical

evidence and is committed outside the presence of others. Nor is it significant that Father had not been accused of molesting B.R.'s other siblings. Two of them were boys, and the third was his biological child. Father also contends B.R.'s testimony was "unstable and inconsistent," but he provides no specific examples. On the contrary, B.R.'s testimony was largely consistent, although precise details may have varied. The fact that B.R. claimed not to remember various details during cross-examination was unsurprising, given her age, the stress of testimony, and the traumatic nature of the experiences. Father characterizes B.R. as "troubled," but there is little evidence to support such a label and, even if it applies, would not necessarily render her testimony untrue.

While Father claims that B.R. was demonstrably untruthful, most of the evidence he relies on involves B.R.'s retractions of her earlier claim of molestation. As we have discussed, these retractions were not surprising in a preteen struggling with an extremely difficult situation, and they did not render her allegations necessarily untrue. Claims of B.R.'s dishonesty unrelated to the allegations of molestation, such as Mother's vague claim that B.R. had lied "too many [times] to count," were unsubstantiated. In short, there was nothing in B.R.'s circumstances or her account of the molestation that renders it unreliable as a matter of law. It therefore stands as substantial evidence to support the jurisdictional finding of molestation.

Mother separately challenges the juvenile court's finding true the allegation that she did not protect B.R. As Mother recognizes, we are not required to consider this argument, having affirmed the jurisdictional finding as to Father. As we explained in *In re I.A.* (2011) 201 Cal.App.4th 1484, "It is commonly said that the juvenile court takes jurisdiction over children, not parents. [Citations.] [¶] . . . [¶] As a result of this focus on the child, it is necessary only for the court to find that one parent's conduct has created circumstances triggering section 300 for the court to assert jurisdiction over the child. [Citations.] . . . For jurisdictional purposes, it is irrelevant which parent created those circumstances. A jurisdictional finding involving the conduct of a particular parent is not necessary for the court to enter orders binding on that parent, once dependency jurisdiction has been established. [Citation.] . . . For this reason, an appellate court may

decline to address the evidentiary support for any remaining jurisdictional findings once a single finding has been found to be supported by the evidence.” (*Id.* at pp. 1491-1492; see similarly *In re M.W.* (2015) 238 Cal.App.4th 1444, 1452.)

Nonetheless, we have the discretion to consider such a challenge “when the finding ‘(1) serves as the basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) “could have other consequences for [the appellant], beyond jurisdiction.” ’ ” (*In re M.W.*, *supra*, 238 Cal.App.4th at p. 1452.) We exercise our discretion here to address the allegation that Mother failed to protect B.R. because it could affect subsequent dependency proceedings.

In doing so, we affirm the juvenile court’s finding regarding Mother’s conduct because, as with the finding regarding Father’s molestation, B.R.’s testimony constituted substantial evidence to support the finding. There is no question that Mother had reason to know of Father’s abuse. She acknowledged that B.R. reported it to her months before the institution of dependency proceedings. Yet, according to B.R.’s testimony, Mother continued to permit B.R. to come into the couple’s bed with Father and to leave B.R. alone with Father. And Mother took few meaningful measures to insure that Father would have had no further access to B.R., such as reporting the allegations to police or insisting that Father leave the house. (See, e.g., *In re Jonathan B.* (2015) 235 Cal.App.4th 115, 120 [finding of failure to protect reversed where mother had reported father’s violence to police].) Although Mother told the investigators that she had taken B.R. for a physical examination after first being told of the abuse, there is substantial evidence that she did not actually do so. Mother’s actions demonstrated far more support for Father than for B.R.

Mother argues she sought to protect B.R. by taking her to a therapist and inviting Father’s mother to move into the house. Referral to a therapist, of course, did little to protect B.R. from further abuse. While Mother may have increased supervision of Father and B.R., B.R.’s testimony demonstrates that her watchfulness was inconsistent or



ineffective.<sup>3</sup> Mother also argues that B.R.’s testimony should not be credited, but, for the reasons we have discussed, we find no basis to wholly reject it or to conclude that it does not amount to substantial evidence in support of the juvenile court’s findings.

Mother relies on *Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738, in arguing that the juvenile court imposed an improper standard in commenting that Mother’s efforts to protect B.R. were half-hearted because she did not believe B.R.. In *Blanca P.*, the mother’s children were detained on allegations of excessive physical discipline by the mother and sexual abuse by the father. (*Id.* at p. 1742.) The evidence of the father’s sexual abuse, however, was dubious, and the fact of sexual abuse was never the subject of a proper jurisdictional hearing. (*Id.* at pp. 1744-1746.) At the 18-month review hearing, the agency argued that reunification services should be terminated because the couple refused to acknowledge father’s sexual abuse, causing the agency to conclude they had not “ ‘internalized’ proper parenting skills.” (*Id.* at p. 1747.) In reversing, the court found it both “Orwellian” and “Kafkaesque” that a child would be taken from her parents because they refused to acknowledge sexual abuse that had never been proven in the first place. (*Id.* at pp. 1751, 1752-1753 & fn. 6.) Unlike the agency in *Blanca P.*, the juvenile court here did not merely assume that abuse had occurred and fault Mother for her failure to believe B.R.’s claims. Rather, the court found, based on substantial evidence, that molestation had occurred and that Mother had failed to protect B.R. from that abuse. Rather than basing its finding of failure to protect on Mother’s refusal to believe B.R.’s claims, the court merely offered its opinion that a *reason* for Mother’s failure to take sufficient steps to protect B.R. was her disbelief.

#### DISPOSITION

The dispositional order of the trial court is affirmed.

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<sup>3</sup> Mother’s substantial-evidence argument relies exclusively on her own and other testimony favorable to her, without addressing the implications of B.R.’s contrary testimony.

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Humes, P.J.

We concur:

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Dondero, J.

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Banke, J.

*In re B.R.* (A146226)